

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CERAMASEAL, INC.

and

Case 3--CA--11895

TEAMSTERS LOCAL 294, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed by the Union on 1 November 1983 and subsequently amended on 7 November 1983 the General Counsel of the National Labor Relations Board issued a complaint on 10 November 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 18 October 1983, following a Board election in Case 3--RC--8383, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended 9 Sept. 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (9 Nov. 1982).) The complaint further alleges that since 27

October 1983 the Company has refused to bargain with the Union. On 17 November 1983 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 29 November 1983 the General Counsel filed a Motion to Transfer Proceeding to Board, to Strike Respondent's Affirmative Defenses and for Summary Judgment and Issuance of Board's Decision and Order (hereinafter referred to as 'Motion for Summary Judgment'). On 9 December 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

On 18 October 1983 the Board issued a Decision and Certification of Representative¹ in which it considered the Respondent's objections in an election held 6 May 1983 and the Regional Director's report and recommendations. The Board after having reviewed the record in light of the exceptions and briefs adopted the Regional Director's findings and recommendations that the Respondent's objections be overruled and certified the Union, necessarily finding that the Respondent did not raise substantial or material issues warranting a hearing.

In its answer to the complaint and in its brief in opposition to the General Counsel's Motion for Summary Judgment, the Respondent admits substantially all of the factual allegations of the complaint including its refusal to recognize and bargain with the Union which has been certified as the collective-bargaining representative of the employees in the appropriate unit described in the complaint. However, the Respondent denied that the

¹ Not reported in bound volumes of Board Decisions.

Union's certification was properly issued and it claims it should have been granted a hearing because of the Union's preelection conduct as delineated in the Respondent's objections to the election.

By its assertions and more specifically by its denials, in whole or in part, of the allegations of the complaint and the arguments propounded in the response, the Respondent is attempting to relitigate the same issue which it raised in the representation proceeding in Case 3--RC--8383.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a division of Clevepak Corporation, a Delaware corporation, manufactures, sells, and distributes bushings, flow throughs, electrical connectors, and related products at its facility in New Lebanon, New York, where it annually purchases and receives from points located outside the State of New York, goods and materials valued in excess of \$50,000. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held 6 May 1983 the Union was certified 18 October 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 24 October 1983 the Union has requested the Company to bargain, and since 27 October 1983 the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after 27 October 1983 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Ceramaseal, Inc., New Lebanon, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees of the Employer at its New Lebanon, New York facility, excluding office clerical employees, all professional employees, all guards and supervisors as defined in the Act and all other employees.

(b) Post at its facility in New Lebanon, New York, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

21 March 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment; and, if an understanding is reached, embody such an understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time production and maintenance employees of the Employer at its New Lebanon, New York facility, excluding office clerical employees, all professional employees, all guards and supervisors as defined in the Act and all other employees.

CERAMASEAL, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 901, 111 West Huron Street, Buffalo, New York 14202, Telephone 716--437--4951.